

**STATEMENT OF U.S. REPRESENTATIVE BARNEY FRANK ON THE  
INCLUSION OF PEOPLE WHO ARE TRANSGENDER IN  
ANTIDISCRIMINATION PROTECTION LEGISLATION**

Testimony in support of H.1728/S.1687

“An Act Relative to Gender-Based Discrimination and Hate Crimes.”

Tuesday, July 14, 2009

Members of the Committee:

While my personal wish was to present my testimony before you in person, unfortunately, my professional obligations in Congress preclude it. As you know, there is very pressing business in the House Financial Services Committee which I chair that requires me to be in Washington this afternoon.

I am particularly disappointed because I want to do all that I can to continue to make sure that civil rights legislative action in The Commonwealth both buoys and builds upon the gains we in Congress are working to secure for the country, namely at this time, Employment Non-Discrimination Act (ENDA) and Hate Crimes legislation, both of which include sexual orientation and gender identity. There will be other bills to consider in the future, but these two are in motion today at the federal level.

The fully inclusive ENDA (HR 3017) which I introduced in the House of Representatives on June 24, has 142 bipartisan co-sponsors, including 11 Committee Chairs, 40 Subcommittee Chairs, three Ranking Members, the Congressional Black Caucus Chair and a Chairman Emeritus as of the close of business on Monday, July 13. That amount of publicly expressed commitment by federal legislators for fully inclusive employment protection against discrimination is the direct result of the effective education done by members of the transgender community and others. It is also a positive outcome of last year's historic Congressional hearing about Non-Discrimination in the Workplace for Transgender Americans, convened by my colleague Chairman Rob Andrews. He announced that he will hold another ENDA Congressional Hearing soon. I am cautiously optimistic that we will pass a fully inclusive ENDA and know that we have a President who has already said he will sign it into law.

Protection against hate crimes, which is included in the proposed Massachusetts legislation, has also made swift progress in the 111<sup>th</sup> Congress. Hate Crimes legislation, the Local Law Enforcement Hate Crimes Prevention Act of 2009 (HR 1913), introduced by my colleague Chairman John Conyers, includes sexual orientation, gender identity and disability, passed the House of Representatives this year, and it is moving forward in the Senate. Hate crimes legislation does not make anything newly illegal, it merely ensures that if someone acts physically against a person illegally on the basis of sexual orientation or gender identity, that the punishment reflects the hateful bias that underlies the already illegal physical action.

I mention this progress on these two important bills to indicate that we have come far in the country over the past two years, and I urge the Commonwealth to match or exceed at home what we are driving federally. By doing the right thing in Massachusetts, you will help us continue our pace and progress in Washington, and I urge you to do that.

Massachusetts' historic leading landmarks for LGBT civil rights are legendary – from being the nation's second state to include employment non-discrimination for sexual orientation – which I introduced in my freshman year as a Massachusetts legislator -- to being the American birthplace of legalized same-sex marriage. And now, the Commonwealth is the first in the country to challenge Section 3 of The Defense of Marriage Act (DOMA), thanks to the suit filed by Attorney General Martha Coakley last week.

The country is moving towards more equal recognition of all Americans. Just this year, Iowa adopted same-sex marriage. If they can do that in Iowa, can we not pass this inclusive legislation in The Commonwealth of Massachusetts now? I say, "Yes, we can."

My testimony delivered at last year's hearing includes a compelling set of facts, legislative history and the recollection that many complaints raised today about including gender identity in anti-discrimination laws are virtually the same kind that we heard 36 years ago when sexual orientation was added, and which have been proven to be invalid in the 20 years since the law was passed. I realize that there are some differences where people who are transgender are concerned, but the general nature of the fears is virtually the same, and we should profit from our experience since 1989 and not be dissuaded from protecting all of our fellow citizens by unfounded concerns. Rather than repeat that set of messages, I kindly urge you to refer to that testimony as still valid and by which I still stand, clearly calling for inclusion of gender identity in this important set of protections against discrimination.

Legislation banning discrimination against transgender people - that is, legislation that simply allows them as citizens to get and keep jobs on their merits - will not by any means make their lives easy. But it is precisely because transgender people through no fault of their own face the degree of prejudice and difficulty that they still encounter that those of us in elected office ought to do what we can to offer them the protections to which they are entitled.

Please know that when I refer to "they" or "them," I am not distancing myself from knowing the experience of prejudice or discrimination. It is merely that I am not a transgender American. I am a left-handed, gay Jew. I am also the first Member of Congress to employ an openly transgender person to work on Capitol Hill. This past January, veteran transgender activist, Massachusetts' own Diego Sanchez joined my legislative staff on healthcare, labor, veterans, LGBT and other issues. He has told me, and told the world in his testimony at last year's Congressional hearing, that despite his impeccable qualifications, he has been initially accepted and then declined by recruiting firms when they discover that there have been two sex markers identified with his Social Security number. That's not right, and we have to fight prejudice by changing reality. I

hired him because he's qualified. Diego and other transgender people, in Massachusetts and across the country, should be evaluated on their merits, not on how they identify, as is true for everybody else.

To some, the notion of transgender protection seems radical. In fact, it is exactly the opposite. What we are talking about here is the right of people in every state to earn a living. The best way to underline this point for me is to go back to the electoral campaign of 2006. In that election, the prospect that I would be chairman of a committee was used in many cases to try to frighten voters against giving the Democrats a majority. Indeed, at least one advertisement I saw warned people not to vote Democratic for the U.S. House in 2006 because if the Democrats got a majority, some of the important committee chairs would be Charlie Rangel, the African-American Congressman from New York, John Conyers, the African-American Congressman from Detroit; and me. When Charlie Rangel was told that the three of us had been trotted out as reasons to vote Republican, he replied, "Gee, I didn't know that Barney Frank was colored."

Building on the theme of my particular unsuitability for high office, one very conservative Republican incumbent in Indiana warned in a radio ad that if people voted for his opponent, Speaker Pelosi would allow me to implement the "radical homosexual agenda." I am pleased to be able to note that the right-winger in question was literally the first incumbent to be declared defeated on election night in 2006, but this left me with a dilemma. Apparently there were people in a congressional district in Indiana who now expected me to produce a "radical homosexual agenda." And I didn't then have one. I do have things I would like to see adopted on behalf of gay, lesbian, bisexual and transgender people: they include the right to marry the individual of our choice; the right to serve in the military to defend our country; and the right to a job based solely on our own qualifications. I acknowledge that this is an agenda, but I do not think any self-respecting radical in history would have considered advocating people's rights to get married, join the army, and earn a living as a terribly inspiring revolutionary platform.

So I submit this statement to you not as part of any radical agenda, but as a plea for us to recognize what I believe is our obligation to treat each other with the respect and dignity and fairness that everyone should be entitled to receive. I will continue to fight in Washington for transgender inclusion in any antidiscrimination legislation. I hope that as I continue that effort, I will be able to point to the state that I am honored to be able to represent in the U.S. Congress as one that has recognized the importance of that principle.

A handwritten signature in black ink that reads "Barney Frank". The signature is stylized with a large, sweeping "B" and a long, horizontal stroke at the end.

BARNEY FRANK